LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 72 LCA 75

Bangalore, dated the 18th September 1975.

Ordered that the Provident Funds (Amendment) Act, 1975 (46 of 1975) published in Part II, Section 1 of the Gazette of India Extraordinay dated 7th August 1975 be republished in the *Karnataka Gazette* for general information.

By Order and in the name of the Governor of Karnataka,

B. NAGESHA RAO,

Under Secretary to Government,
32 *Department of Law and Parly. Affairs*

Assented to on 7th-August-1975 Act No. 46 of 1975

THE PROVIDENT FUNDS (AMENDMENT) ACT, 1975.

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ACT

further to amend the Provident Funds Act, 1925.

BE it enacted by Parliament in the Twenty-sixth year of the Republic of India as follows :—

1. Short title and commencement.—(1) This Act may be called the Provident Funds (Amendment) Act, 1975.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new section 6A.—After Section 6 of the Provident Funds Act, 1925 (19 of 1925) (hereinafter referred to as the principal Act), the following Section shall be inserted, namely —

'6A Withholding or recovery of Government contributions in case of Central Government officers taking up

without prior permission. commercial employment within two years of their retirement —(1) In this section, unless the context otherwise requires,—

(*a*) ' Central Government officer'' means a subscriber to, or depositor in, a contributory provident fund constituted by the Central Government, who, immediately before his retirement, is a member of a Central Service Class I, but does not include an officer appointed under a contract of service for a specified term ;

(*b*) "commercial employment" means employment in any capacity (including that of an agent) under any company, co-operative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and includes also—

(*i*) a directorship of a company ;

(*ii*) the holding of any office, whether elective or otherwise, such as that of president, chairman, manager, secretary, treasurer, by whatever name called in a co-operative society ; and

(*iii*) the setting up of practice, either independently or as partner of a firm, as adviser or consultant in matters in respect of which the Central Government officer,—

(*A*) has no professional qualifications and the matters in respect of which the practice is to be set up or is carried on are relatable to his official knowledge or experience, or

(*B*) has professional qualification, but the matters in respect of which such practice is to be set up are such as are likely to give his clients an unfair advantage by reason of the posts held by him under the Central Government, or

(*C*) has to undertake work involving liaison or contact with the offices or officers of Central Government, but does not include employment in or under a corporation or company wholly or substantially owned or controlled by Government or employment in or under a body controlled or financed wholly or substantially by Government ;

(*c*) "Government contributions" means contributions made after the commencement of the Provident Funds (Amendment) Act, 1975, in respect of any period after such commencement, by the Central Government or by a State Government or by a local authority within the meaning of the Local Authorities Loans Act, 1914 (9 of 1914);

(*d*) "prescribed" means prescribed by rules made by the Central Government by notification in the Official Gazette.

(*3*) No Central Government officer shall have any right to the Government contributions made to his credit in a contributory provident fund in any case where he takes up commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Central Government.

Explanation 1.—For the purposes of this sub-section and sub-section (7), "date or retirement" in relation to a Central Government officer re-employed after retirement without any break either in the same or any other Class I post under the Central Government or any other equivalent post under a State Government, shall mean the date on which such Central Government officer finally ceases to be re-employed in Government service.

Explanation 2.—A Central Government officer permitted by the Central Government to take up a particular Commercial employment during his leave proparatory to retirement shall be deemed for the purposes of this sub-section, to have obtained prior permission of the Central Government for his continuance in such employment after retirement.

(3) Subject to the provisions of sub-section (4), the Central Government may, by order in writing on an application made in the prescribed form by a Central Government officer, grant, subject to such conditions, if any, as it may deem necessary, permission, or refuse, for reasons to be recorded in the order, permission, to such officer to take up the commercial employment specified in the application.

(4) In granting or refusing permission under this section to a Central Government officer for taking up any commercial employment, the Central Government shall have regard to the following factors, namely :—

(a) the nature of the employment proposed to be taken up and the antecedents of the employer ;

(b) whether his duties in the employment which he proposes to take up might be such as to bring him into conflict with Government ;

(c) whether the officer while in service had any such dealing with the employed under whom he proposes to seek employment as might afford a reasonable basis for the suspicion that such officer had shown favours to such employer :

(d) any other relevant factors which may be prescribed.

(5) Where within a period of sixty days of the date of receipt of an application under sub section (3), the Central Government does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the Central Government shall be deemed to have granted the permission applied for.

(6) Where the Central Government grants the permission applied for subject to any conditions or refuses such permission, the applicant may, within thirty days of the receipt of the order of the Central Government to that effect, make a representation against any such condition or refusal and the Central Government may make such orders thereon as it deems fit :

Provided that no order other than an order cancelling such condition or granting such permission without any conditions shall be made under this sub section without giving the person making the representation an opportunity to show cause against the order proposed to be made.

(7) If any Central Government officer takes up any commercial employment at any time before the expiry of

two years from the date of his retirement without the prior permission of the Central Government or commits a breach of any condition subject to which permission to take up any commercial employment has been granted to him under this section, it shall be competent for the Central Government to declare by order in writing and for reasons to be recorded therein that he-shall not be entitled to such part of the Government contributions made in relation to such officer as may be specified in the order and if he has received payment thereof, to direct that he shall refund to the Central Government an amount equivalent to such part of the Government contributions :

Provided that no such order shall be made without giving the officer concerned an opportunity of showing cause against such declaration :

Provided further that in making any order under this sub-section, the Central Government shall have regard to the following factors, namely :—

(i) the financial circumstances of the officer concerned ;

(ii) the nature of, and the emoluments from, the commercial employment taken up by the officer concerned;

(iii) such other relevant factors as may be prescribed.

(8) Any amount required to be refunded by an order under sub-section (7) may, if it is not refunded within the prescribed period, be recovered as arrears of land revenue.

(9) Every order passed by the Central Government under this section shall be communicated to the officer concerned.

(10) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or the rules applicable to any contributory provident fund.

(11) Every rule made by the Central Government under this section shall be laid, as soon as may be after

it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification of annulment shall be without prejudice to the validity of anything previously done under that rule.

3 Amendment of section 8—In sub-section (1) and (2) of section 8 of the principal Act, after the words "provision of this Act", the brackets, words, figure and letter "(except section 6A)" shall be inserted: